In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 525

CAMPBELL SOUP COMPANY and BUTCHERS UNION LOCAL NO. 127, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This is a companion case to *Butchers Union Local No. 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO* v. *National Labor Relations Board*, No. 439, this Term, pending on the Union's petition for certiorari. The cases involve the same Board order and court of appeals judgment.

As explained in greater detail in the Board's brief in opposition in No. 439, the Company, in agreement

with the Union, required newly hired employees to join the Union and deducted union dues and initiation fees from their wages, all prior to the 30-day grace period provided by the Act. The Board found that by engaging in such conduct the Company and Union discriminated against the employees in violation of Sections 8(a)(3) and (1), and 8(b)(2) and (1)(A) of the Act, and that the Company further violated Section 8(a)(2) by unlawfully assisting the Union. Accordingly, the Board ordered the Company and Union to cease and desist from such unfair labor practices and to reimburse the employees for the unlawfully deducted dues and initiation fees; it made the Company's and Union's reimbursement obligation joint and several. The court of appeals sustained the Board's findings and enforced its order in full.

The only question raised by the Company here, which was not raised by the Union in No. 439, is whether the Board properly ordered the Company, jointly and severally with the Union, to make the discriminatees whole for the dues and initiation fees unlawfully deducted by the Company and forwarded to the Union. The court of appeals correctly held, we submit, that the choice of this remedy, rather than one imposing sole or primary liability upon the Union, is within the Board's discretion [1] where, as is "conceded"

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[1] This Court has made clear that the task of devising remedies to effectuate the policies of the Act is a "broad discretionary one" which Congress has entrusted to the Board, subject to limited judicial review. *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 346; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 194.

by the Company here (Pet. 5, 11), "both the union and the employer had engaged in the discriminatory practice" (Pet. App. vi). Accord: *National Labor Relations Board* v. *Cadillac Wire Corp. and Local 810, Teamsters*, 290 F. 2d 261 (C.A. 2), enforcing, 128 NLRB 1002. Contrary to the Company's contention, the Board's order is not punitive. As this Court held in *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U.S. 533, 544, where the employer also unlawfully deducted dues from the employees wages and forwarded the monies to the union:

> The purpose of the order is not to penalize the Company by requiring repayment of sums it did not retain in its treasury. Those sums did go into the treasury of the [union unlawfully assisted by Company] to accomplish purposes the Company evidently believed to be to its advantage, and the order of reimbursement is intended to remove the effects of this unfair labor practice by restoring to the employees what would not have been taken from them if the Company had not contravened the Act. This is not a case in which the Board has ordered the payment of sums to third parties [as in *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U.S. 7, erroneously relied upon by the Company here (Pet. 9-10)].

For the foregoing reasons and those set forth in our brief in opposition in No. 439, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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